CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 182.

THE PENNSYLVANIA LUMBERMEN'S MUTUAL FIRE INSURANCE COMPANY

vs.

CHARLES C. MEYER.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED JANUARY 27, 1904.

(19,219.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 13, 1904.

1 United States Circuit Court of Appeals for the Second Circuit.

THE PENNSYLVANIA LUMBERMEN'S MUTUAL FIRE INSURANCE Company, Plaintiff in Error,
v.
CHARLES C. MEYER, Defendant in Error.

This cause comes here upon a writ of error to review a judgment of the circuit court for the western district of New York upon a decision of that court rendered, after a trial without a jury, in favor of the defendant in error, who was plaintiff below.

Upon examination of the record it appears that in addition to various questions as to the merits of the controversy which are presented by the assignments of error, the jurisdiction of the circuit court is in issue. Under sections 5 and 6 of the act of March 3, 1891, writs of error in such cases are to be taken direct to the supreme court, and the grant of appellate jurisdiction to circuit courts of appeal does not include such cases. This court therefore reserves judgment upon the other questions, and certifies the question of jurisdiction to the Supreme Court.

2 *Statement of Facts.*

The facts out of which the matter of jurisdiction arises are as follows:

The defendant in error, a citizen of the State of New York, recovered judgment herein against the plaintiff in error, a citizen of the State of Pennsylvania, for five thousand three hundred fourteen dollars and ninety-eight cents ($5,314.98) damages and costs for destruction by fire of buildings in Rochester, N. Y., insured by the plaintiff in error.

The action was commenced in the supreme court of the State of New York, by service of the summons on Samuel H. Beach, at the city of Rome, N. Y., a director of the company, who resided in that city, and on application of the company, appearing specially, was removed into the circuit court because of diverse citizenship of the parties. By motion, on special appearance, to set aside the service, by plea, exception and assignment of error, the question as to whether jurisdiction of the company had been obtained by such service has been properly raised.

The defendant in error is, and at the time of the commencement of this action was, a citizen and resident of the State of New York. The plaintiff in error is a fire insurance corporation organized under the laws of the State of Pennsylvania, and its office is in Philadelphia. Written applications were duly made to it for the

issuance of the policies in suit, and were mailed from Roche
3 ter, N. Y. to the company at Philadelphia, Pennsylvan
The policies were made out and executed by it at Phil
delphia and were sent to the insured at Rochester, N. Y., where
received the same. All transactions between the company and sa
insured, subsequent to the issuance of said policies and until aft
the destruction of said property by fire were by correspondence,
writing, from Philadelphia to him at Rochester, and he writi
from Rochester to it in Philadelphia.

Three of the said company's thirteen directors reside in the Sta
of New York, but the only act done by them for it is to attend fro
time to time the meetings of its board of directors which are he
in the city of Philadelphia, and there to give such advice and ta
such action in connection with its business as may seem to the
proper. They perform no duties and do no acts for the company i
the State of New York and never have. The company has no agen
or officers within that State and has not had at any time. It has
office within that State, has never been authorized or licensed b
the insurance department thereof to do business therein, and ha
not taken the steps required by law for that purpose. At the da
of the service of the summons, as aforesaid, the said company ha
and now has, about nine hundred thousand dollars ($900,000.) ou
standing insurance on property within the State of New York, whic
is something less than one third of its total risks. The application
therefor were made by mail addressed to it at Philadelphi
4 and the policies were executed and issued at that city an
sent by mail from there to the insured within the State
New York.

Ever since the plaintiff in error was incorporated it has been en
gaged in the business of insuring property located in the State
New York and other States against loss by fire, and has sent b
mail circulars from Philadelphia into said State soliciting business
In the prosecution of its business and for the purpose of increasin
it, the company sends its general manager to the different conven
tions of lumbermen held in the State of New York for the purpos
of urging upon those attending upon such conventions the advan
tages of insuring with it. It sends its adjusters into the State o
New York when a loss by fire occurs there to property insured b
it, for the purpose of adjusting the amount of such loss. It origi
nally placed insurance upon the property covered by the policies i
question after its manager had pointed out the advantage of insur
ing in the company, the conversation being had at the city o
Rochester, in said State.

Question Certified.

Upon the facts set forth above the question of law concerning which this court desires the instruction of the Supreme Court is:

"Had the circuit court jurisdiction of the plaintiff in error?"

In accordance with the provision of section 6 of the act
5 of March 31, 1891, establishing the courts of appeal, the foregoing question of law is by the circuit court of appeals for the second circuit hereby certified to the Supreme Court.

Dated January 19th, 1904.

E. HENRY LACOMBE,
Circuit Judge.
WM. K. TOWNSEND,
Circuit Judge.
ALFRED C. COXE,
Circuit Judge.

6 UNITED STATES OF AMERICA, }
Southern District of New York. }

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate was filed and entered of record in my office on the 19th day of January, 1904, and as directed by the judges of said court said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

New York, January 19th, 1904.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

7 [Endorsed:] United States circuit court of appeals, second circuit. The Pennsylvania Lumbermen's Mutual Fire Insurance Co. plaintiff in error, *v.* Charles C. Meyer, defendant in error. Certificate to Supreme Court. United States circuit court of appeals second circuit. Filed Jan. 19 1904 William Parkin, clerk.

Endorsed on cover: File No. 19,219. U. S. C. C. of appeals, 2nd circuit. Term No. 182. The Pennsylvania Lumbermen's Mutual Fire Insurance Company *vs.* Charles C. Meyer. (Certificate.) Filed January 27", 1904. File No. 19,219.

(19,219.)

IN THE SUPREME COURT OF THE UNITED STATES.

No. 182, October Term, 1904.

Pennsylvania Lumbermen's Mutual Fire Insurance Co.
vs.
Charles C. Meyer.

Stipulation as to Policies in Suit.

It is hereby stipulated that the policies of insurance on which suit was brought were all in the same form, and that the terms and conditions of these policies are correctly set out in the copy of one of these policies in printed record of the above case in the circuit court of appeals for the second circuit, and that the court may consider and decide this case with the same effect as if in the statement of facts accompanying the question certified by said United States circuit court of appeals for the second circuit the said court had found and certified the additional fact that the policies of insurance sued upon were in the form and language of the policy set out in said record in said United States circuit court of appeals.

Washington, March 15, 1904.

FRANK P. PRICHARD,
Att'y for Penna. Lumb. Mut. F. I. Co.

Herman W. Morris HENEAULT & MODES,
Att'y for Charles C. Meyer, Def't in Error.

[Endorsed :] File No. 19,219. Supreme Court U. S., October term, 1904. Term No. 182. The Pennsylvania Lumbermen's Mutual Fire Insurance Co. *vs.* Charles C. Meyer. Stipulation of counsel as to policies of insurance. Filed March 15th, 1905.

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